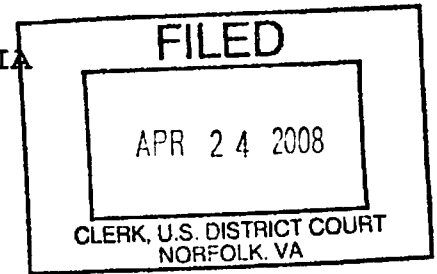


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



EARL ELWOOD ALLEN, #3080006,

Petitioner,

v.

ACTION NO. 2:07cv196

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on November 27, 2001, in the Circuit Court of the County of King George for robbery, grand larceny, and second-degree murder, as a result of which he was sentenced to serve a total of eighty years in the Virginia penal system with forty-eight years suspended.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on April 4, 2008, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the

United States Magistrate Judge's Report and Recommendation and the time for filing same has expired.

The Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed April 4, 2008, and it is therefore ORDERED that the petition be DENIED and DISMISSED and that judgment be entered in favor of the respondent. The petition is DENIED because the grounds alleged were procedurally barred from review in the state courts and thus, may not now be considered in this federal Court.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/

Rebecca Beach Smith
United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

April 24, 2008